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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12
13 MICHAEL TERPIN,

14 Plaintiff,

15 v.

16 AT&T MOBILITY LLC, *et al.*,

17 Defendants.

CASE NO. 2:18-CV-6975 (ODW)

**DEFENDANT AT&T MOBILITY LLC'S
ANSWER TO PLAINTIFF'S SECOND
AMENDED COMPLAINT**

Action Filed: August 15, 2018

1 Defendant AT&T Mobility LLC (“AT&T”) hereby answers Michael Terpin’s (“Mr. Terpin” or
2 “Plaintiff”) Second Amended Complaint. Any allegation not explicitly admitted is denied. AT&T
3 does not, by noting or admitting that the Second Amended Complaint purports to characterize or quote
4 particular documents, admit the truth of any assertion in the referenced document. Moreover, headings
5 and footnotes contained within the Second Amended Complaint are not substantive allegations to
6 which an answer is required. To the extent headings are substantive allegations to which an answer is
7 required, AT&T denies the allegations. To the extent footnotes in the Second Amended Complaint are
8 deemed to be substantive allegations, then the response to the paragraph in which the footnote is found
9 is AT&T’s response to the footnote as well. In answer to the Second Amended Complaint, AT&T
10 states as follows:

I. Response to Allegations Styled “Jurisdiction and Venue”

12 1. AT&T lacks knowledge or information sufficient to determine the truth of the
13 allegations in Paragraph 1 of the Second Amended Complaint regarding Mr. Terpin's domicile and
14 residence. The remaining allegations in Paragraph 1 of the Second Amended Complaint contain legal
15 conclusions that require no answer. To the extent that an answer is required, AT&T admits for purposes
16 of this action only that the Court has subject matter jurisdiction over this action. AT&T notes that
17 AT&T Inc. is not a Defendant in this case and was dismissed voluntarily by Plaintiff on August 23,
18 2018. Except as expressly admitted, AT&T denies the allegations in Paragraph 1 of the Second
19 Amended Complaint.

20 2. AT&T lacks knowledge or information sufficient to determine the truth of the
21 allegations in the second and third sentences of Paragraph 2 of the Second Amended Complaint. AT&T
22 denies that it violated Mr. Terpin's privacy in any way. The allegations in the first and fourth sentences
23 in Paragraph 2 of the Second Amended Complaint contain legal conclusions that require no answer.
24 To the extent that an answer is required, AT&T admits for purposes of this action only that the Court
25 has personal jurisdiction over AT&T and that venue is appropriate in this district. Except as expressly
26 admitted, AT&T denies the allegations in Paragraph 2 of the Second Amended Complaint.

II. Response to Allegations Styled “Introduction”

3. AT&T admits that federal and state laws and regulations govern its conduct. AT&T also admits that it has its own Privacy Policy and Code of Business Conduct (“COBC”). Those laws, regulations, and policies speak for themselves, and AT&T denies any characterization or description that is inconsistent therewith. Except as expressly admitted, AT&T denies the allegations in Paragraph 3 of the Second Amended Complaint.

4. AT&T notes that the FCC entered into a Consent Decree with AT&T Services, Inc., which is not a party to this case. That Consent Decree speaks for itself, and AT&T denies any characterization or description that is inconsistent therewith. AT&T denies the remaining allegations in Paragraph 4 of the Second Amended Complaint.

5. AT&T denies the allegations in Paragraph 5 of the Second Amended Complaint.

6. AT&T admits that effecting a SIM change without authorization can be referred to as a “SIM swap.” AT&T lacks sufficient information to form a belief as to the truth of the remaining allegations in Paragraph 6, which refer to SIM changes and criminal hacking motivations and conduct in general and without reference to a specific incident, and on that basis denies the same. AT&T denies any remaining allegations in Paragraph 6 of the Second Amended Complaint.

7. AT&T denies the allegations in Paragraph 7 of the Second Amended Complaint.

8. AT&T lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the last sentence of Paragraph 8 of the Second Amended Complaint, and, on that basis, it denies them. AT&T denies the remaining allegations in Paragraph 8 of the Second Amended Complaint.

9. AT&T admits that Exhibit F appears to be a copy of a criminal complaint in a case captioned *United States v. White et al.* That document speaks for itself. Except as expressly admitted, AT&T denies the allegations in Paragraph 9 of the Second Amended Complaint.

10. AT&T lacks knowledge or information sufficient to determine the truth of the allegations in Paragraph 10 of the Second Amended Complaint regarding Mr. Terpin's expectations and beliefs, and on that basis denies the same. AT&T lacks knowledge or information sufficient to determine the truth of the allegations in Paragraph 10 of the Second Amended Complaint that Plaintiff

1 experienced two hacks. AT&T denies any remaining allegations in Paragraph 10 of the Second
2 Amended Complaint.

3 11. AT&T lacks knowledge or information sufficient to determine the truth regarding the
4 actions of Smith or any alleged “gang of hackers,” and on that basis denies the same. AT&T denies
5 the remaining allegations in Paragraph 11 of the Second Amended Complaint.

6 12. AT&T denies that any AT&T employee participated in the events alleged in Paragraph
7 12 of the Second Amended Complaint. AT&T admits that two-factor authentication typically requires
8 a person to provide two pieces of information to access the protected information. AT&T lacks
9 sufficient knowledge or information to form a belief as to the truth of the remaining allegations in
10 Paragraph 12, and on that basis denies the same.

11 13. AT&T denies the allegations in Paragraph 13 of the Second Amended Complaint.

12 14. AT&T lacks sufficient information to form a belief as to the truth of the allegations in
13 Paragraph 14 regarding Mr. Terpin’s alleged communications with other individuals who experienced
14 SIM swaps. The allegations in the second sentence of Paragraph 14 of the Second Amended Complaint
15 are too vague for AT&T to form a belief as to the truth of the allegations, and, on that basis, AT&T
16 denies them. AT&T denies the remaining allegations in Paragraph 14 of the Second Amended
17 Complaint.

18 15. AT&T denies the allegations in Paragraph 15 of the Second Amended Complaint.

19 16. The allegations in the third and fourth sentences of Paragraph 16 of the Second
20 Amended Complaint are too vague for AT&T to form a belief as to the truth of the allegations, and, on
21 that basis, AT&T denies them. AT&T denies the remaining allegations in Paragraph 16 of the Second
22 Amended Complaint.

23 17. The allegations in the first sentence of Paragraph 17 of the Second Amended Complaint
24 are too vague for AT&T to form a belief as to the truth of the allegations and, on that basis, AT&T
25 denies them. AT&T notes that the Court has dismissed Plaintiff’s demand for punitive damages.
26 AT&T denies the remaining allegations in Paragraph 17 of the Second Amended Complaint.

III. Response to Allegations Styled “The Parties”

18. AT&T lacks knowledge or information sufficient to determine the truth of the allegations in the first sentence of Paragraph 18 of the Second Amended Complaint, and on that basis denies the same. AT&T lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 18, which refer to cryptocurrency in general and without reference to a specific “holder of cryptocurrency” or type of cryptocurrency, and on that basis denies the same.

19. AT&T lacks knowledge or information sufficient to determine the truth of the allegations in Paragraph 19 of the Second Amended Complaint, and on that basis denies the same.

20. AT&T admits that it is a wholly owned subsidiary of AT&T Inc., a Delaware Corporation with its principal place of business in Dallas, Texas. AT&T admits it is a limited liability corporation with its principal place of business in Brookhaven, Georgia. AT&T further admits that it provides wireless service to subscribers in the United States, Puerto Rico, and the U.S. Virgin Islands. The remaining allegations of Paragraph 20 contain legal conclusions that require no answer. To the extent that an answer is required, AT&T notes that the FCA and related regulations speak for themselves, and denies any characterization or description that is inconsistent therewith. Except as expressly admitted, AT&T denies the allegations in Paragraph 20 of the Second Amended Complaint.

21. AT&T admits that it is a leading telecommunications provider in the United States. AT&T further admits that AT&T, Inc. is a holding company whose subsidiaries and affiliates operate in the communications and digital entertainment services industry. AT&T admits that its Form 8-K filed on October 24, 2017, indicated that, at September 30, 2017, AT&T Inc. and its subsidiaries and affiliates had 138.8 million domestic wireless subscribers. AT&T admits that its 2017 AT&T Earnings Investor Briefing provided that, in 2017, AT&T Inc. had consolidated revenues of \$160.5 billion and total assets of \$444,097,000,000. Except as expressly admitted, AT&T denies the allegations in Paragraph 21 of the Second Amended Complaint.

22. AT&T admits that it has entered into certain transactions in the past ten years. The terms of those transactions are set out in separate agreements, which speak for themselves. AT&T denies any characterization or description that is inconsistent therewith. AT&T lacks knowledge or

1 information sufficient to form a belief as to the truth of the allegations of the second, third, or fourth
2 sentences of the Second Amended Complaint and on that basis denies the same. AT&T denies the
3 remaining allegations in Paragraph 22 of the Second Amended Complaint.

4 23. The allegations in the first sentence of Paragraph 23 of the Second Amended Complaint
5 are too vague for AT&T to form a belief as to the truth of the allegations, and, on that basis, AT&T
6 denies them. To the extent Paragraph 23 of the Second Amended Complaint purports to characterize
7 and quote from an *EFF* article, that article speaks for itself, and AT&T denies any characterization or
8 description that is inconsistent therewith. AT&T admits that it has engaged in communications with
9 the FCC on multiple occasions regarding a variety of issues. Those communications speak for
10 themselves. AT&T denies any remaining allegations in Paragraph 23 of the Second Amended
11 Complaint.

12 24. The allegations in the first sentence of paragraph 24 of the Second Amended Complaint
13 are too vague for AT&T to form a belief as to the truth of the allegations, and, on that basis, AT&T
14 denies them. AT&T denies the remaining allegations in Paragraph 24 of the Second Amended
15 Complaint.

16 25. AT&T denies the allegations in Paragraph 25 of the Second Amended Complaint.

17 26. AT&T denies the allegations in Paragraph 26 of the Second Amended Complaint.

18 27. Because the Court dismissed Does Eleven through Twenty Five, no response is required
19 to Paragraph 27 of the Second Amended Complaint with regard to these parties. The allegations in
20 Paragraph 27 of the Second Amended Complaint are too vague for AT&T to form a belief as to the
21 truth of the allegations, and, on that basis, AT&T denies them.

22 **IV. Response to Allegations Styled “Factual Allegations”**

23 **A. Response to Allegations Styled “AT&T’s Statutory Obligation To Protect Customers’
24 Personal Information Under The Federal Communications Act”**

25 28. The allegations in Paragraph 28 contain legal conclusions that require no answer. To
26 the extent that an answer is required, AT&T notes that the FCA speaks for itself, and denies any
27 characterization or description that is inconsistent therewith. AT&T denies any remaining allegations
28 in Paragraph 28 of the Second Amended Complaint.

1 29. The allegations in Paragraph 29 contain legal conclusions that require no answer. To
2 the extent that an answer is required, AT&T notes that the FCA speaks for itself, and denies any
3 characterization or description that is inconsistent therewith. AT&T denies any remaining allegations
4 in Paragraph 29 of the Second Amended Complaint.

5 30. The allegations in Paragraph 30 contain legal conclusions that require no answer. To
6 the extent that an answer is required, AT&T notes that the FCA speaks for itself, and denies any
7 characterization or description that is inconsistent therewith. AT&T denies any remaining allegations
8 in Paragraph 30 of the Second Amended Complaint.

9 31. The allegations in Paragraph 31 contain legal conclusions that require no answer. To
10 the extent that an answer is required, AT&T notes that the FCA speaks for itself, and denies any
11 characterization or description that is inconsistent therewith. AT&T denies any remaining allegations
12 in Paragraph 31 of the Second Amended Complaint.

13 32. The allegations in Paragraph 32 contain legal conclusions that require no answer. To
14 the extent that an answer is required, AT&T notes that Paragraph 32 purports to characterize and quote
15 from rules promulgated by the FCC to implement Section 222 of the FCA (“CPNI Rules”). The CPNI
16 Rules speak for themselves, and AT&T denies any characterization or description that is inconsistent
17 therewith. AT&T denies any remaining allegations in Paragraph 32 of the Second Amended
18 Complaint.

19 33. The allegations in Paragraph 33 contain legal conclusions that require no answer. To
20 the extent that an answer is required, AT&T notes that Paragraph 33 purports to characterize and quote
21 from the CPNI Rules. The CPNI Rules speak for themselves, and AT&T denies any characterization
22 or description that is inconsistent therewith. AT&T denies any remaining allegations in Paragraph 33
23 of the Second Amended Complaint.

24 34. The allegations in Paragraph 34 contain legal conclusions that require no answer. To
25 the extent that an answer is required, AT&T notes that Paragraph 34 purports to characterize and quote
26 from the CPNI Rules. The CPNI Rules speak for themselves, and AT&T denies any characterization
27 or description that is inconsistent therewith. AT&T denies any remaining allegations in Paragraph 34
28 of the Second Amended Complaint.

1 35. The allegations in Paragraph 35 contain legal conclusions that require no answer. To
2 the extent that an answer is required, AT&T notes that Paragraph 35 purports to characterize and quote
3 from an FCC order. That order speaks for itself and AT&T denies any characterization or description
4 that is inconsistent therewith. AT&T denies any remaining allegations in Paragraph 35 of the Second
5 Amended Complaint.

6 36. The allegations in Paragraph 36 contain legal conclusions that require no answer. To
7 the extent that an answer is required, AT&T notes that Paragraph 36 purports to characterize and quote
8 from an FCC order. That order speaks for itself and AT&T denies any characterization or description
9 that is inconsistent therewith. AT&T denies any remaining allegations in Paragraph 36 of the Second
10 Amended Complaint.

11 37. AT&T denies the allegations in Paragraph 37 of the Second Amended Complaint.

12 38. The allegations in the first sentence of Paragraph 38 of the Second Amended Complaint
13 are too vague for AT&T to form a belief as to the truth of the allegations, and, on that basis, AT&T
14 denies them. AT&T denies the remaining allegations in Paragraph 38 of the Second Amended
15 Complaint.

16 **B. Response to Allegations Styled “AT&T Employees’ Disclosure Of Customers’ Personal
17 Information And The April 8, 2015 FCC Consent Decree”**

18 39. AT&T notes that the FCC entered into a Consent Decree with AT&T Services, Inc.,
19 which is not a party to this case. That Consent Decree speaks for itself, and AT&T denies any
20 characterization or description that is inconsistent therewith. AT&T denies any remaining allegations
21 in Paragraph 39 of the Second Amended Complaint.

22 40. AT&T notes that the FCC entered into a Consent Decree with AT&T Services, Inc.,
23 which is not a party to this case. That Consent Decree speaks for itself, and AT&T denies any
24 characterization or description that is inconsistent therewith. AT&T denies any remaining allegations
25 in Paragraph 40 of the Second Amended Complaint.

26 41. AT&T notes that the FCC entered into a Consent Decree with AT&T Services, Inc.,
27 which is not a party to this case. That Consent Decree speaks for itself, and AT&T denies any
28

1 characterization or description that is inconsistent therewith. AT&T denies any remaining allegations
2 in Paragraph 41 of the Second Amended Complaint.

3 42. AT&T notes that the FCC entered into a Consent Decree with AT&T Services, Inc.,
4 which is not a party to this case. That Consent Decree speaks for itself, and AT&T denies any
5 characterization or description that is inconsistent therewith. AT&T denies any remaining allegations
6 in Paragraph 42 of the Second Amended Complaint.

7 43. AT&T notes that the FCC entered into a Consent Decree with AT&T Services, Inc.,
8 which is not a party to this case. That Consent Decree speaks for itself, and AT&T denies any
9 characterization or description that is inconsistent therewith. AT&T denies any remaining allegations
10 in Paragraph 43 of the Second Amended Complaint.

11 44. AT&T notes that the FCC entered into a Consent Decree with AT&T Services, Inc.,
12 which is not a party to this case. That Consent Decree speaks for itself, and AT&T denies any
13 characterization or description that is inconsistent therewith. The allegations in Paragraph 44 contain
14 legal conclusions that require no answer. To the extent that an answer is required, AT&T notes that
15 the FCA speaks for itself, and denies any characterization or description that is inconsistent therewith.
16 AT&T further notes that Paragraph 44 purports to characterize an FCC order. That order speaks for
17 itself, and AT&T denies any characterization or description that is inconsistent therewith. AT&T denies
18 any remaining allegations in Paragraph 44 of the Second Amended Complaint.

19 45. AT&T notes that the FCC entered into a Consent Decree with AT&T Services, Inc.,
20 which is not a party to this case. That Consent Decree speaks for itself, and AT&T denies any
21 characterization or description that is inconsistent therewith. The remaining allegations in Paragraph
22 45 contain legal conclusions that require no answer. To the extent that an answer is required, AT&T
23 notes that the FCA speaks for itself, and denies any characterization or description that is inconsistent
24 therewith. AT&T further notes that Paragraph 45 purports to characterize an FCC order. That order
25 speaks for itself, and AT&T denies any characterization or description that is inconsistent therewith.
26 AT&T denies any remaining allegations in Paragraph 45 of the Second Amended Complaint.

27 46. AT&T notes that the FCC entered into a Consent Decree with AT&T Services, Inc.,
28 which is not a party to this case. That Consent Decree speaks for itself, and AT&T denies any

1 characterization or description that is inconsistent therewith. AT&T denies any remaining allegations
2 in Paragraph 46 of the Second Amended Complaint.

3 47. AT&T notes that the FCC entered into a Consent Decree with AT&T Services, Inc.,
4 which is not a party to this case. That Consent Decree speaks for itself, and AT&T denies any
5 characterization or description that is inconsistent therewith. AT&T denies any remaining allegations
6 in Paragraph 47 of the Second Amended Complaint.

7 48. AT&T notes that the FCC entered into a Consent Decree with AT&T Services, Inc.,
8 which is not a party to this case. That Consent Decree speaks for itself, and AT&T denies any
9 characterization or description that is inconsistent therewith. AT&T denies any remaining allegations
10 in Paragraph 48 of the Second Amended Complaint.

11 49. AT&T notes that the FCC entered into a Consent Decree with AT&T Services, Inc.,
12 which is not a party to this case. That Consent Decree speaks for itself, and AT&T denies any
13 characterization or description that is inconsistent therewith. AT&T denies any remaining allegations
14 in Paragraph 49 of the Second Amended Complaint.

15 50. AT&T notes that the FCC entered into a Consent Decree with AT&T Services, Inc.,
16 which is not a party to this case. That Consent Decree speaks for itself, and AT&T denies any
17 characterization or description that is inconsistent therewith. AT&T denies any remaining allegations
18 in Paragraph 50 of the Second Amended Complaint.

19 51. AT&T notes that the FCC entered into a Consent Decree with AT&T Services, Inc.,
20 which is not a party to this case. That Consent Decree speaks for itself, and AT&T denies any
21 characterization or description that is inconsistent therewith. The allegations in Paragraph 51 contain
22 legal conclusions that require no answer. To the extent that an answer is required, AT&T denies the
23 allegations in Paragraph 51 of the Second Amended Complaint.

24 **C. Response to Allegations Styled “AT&T’s Privacy And Security Commitments To
25 Customers In Its Privacy Policy And Code Of Business Conduct”**

26 52. AT&T admits that it has a Privacy Policy and a COBC, and that Paragraph 52 of the
27 Second Amended Complaint purports to quote and characterize that Privacy Policy and COBC. Those
28 documents speak for themselves, and AT&T denies any characterization or description that is

1 inconsistent therewith. AT&T denies the remaining allegations in Paragraph 52 of the Second
2 Amended Complaint.

3 53. AT&T notes that Paragraph 53 purports to characterize AT&T's Privacy Policy and
4 COBC. Those documents speak for themselves, and AT&T denies any characterization or description
5 that is inconsistent therewith. AT&T denies any remaining allegations in Paragraph 53 of the Second
6 Amended Complaint.

7 54. AT&T notes that Paragraph 54 purports to characterize AT&T's Privacy Policy. That
8 document speaks for itself, and AT&T denies any characterization or description that is inconsistent
9 therewith. AT&T denies any remaining allegations in Paragraph 54 of the Second Amended
10 Complaint.

11 55. AT&T notes that Paragraph 55 purports to characterize AT&T's Privacy Policy. That
12 document speaks for itself, and AT&T denies any characterization or description that is inconsistent
13 therewith. AT&T denies any remaining allegations in Paragraph 55 of the Second Amended
14 Complaint.

15 56. The allegations in the first sentence of Paragraph 56 contain legal conclusions that
16 require no answer. To the extent that an answer is required, AT&T denies the allegations in the first
17 sentence of Paragraph 56. AT&T notes that the remaining allegations in Paragraph 56 purport to
18 characterize AT&T's COBC. That document speaks for itself, and AT&T denies any characterization
19 or description that is inconsistent therewith. AT&T denies any remaining allegations in Paragraph 56
20 of the Second Amended Complaint.

21 57. AT&T notes that Paragraph 57 purports to characterize AT&T's COBC. That document
22 speaks for itself, and AT&T denies any characterization or description that is inconsistent therewith.
23 AT&T denies any remaining allegations in Paragraph 57 of the Second Amended Complaint.

24 58. AT&T notes that Paragraph 58 purports to characterize AT&T's Privacy Policy. That
25 document speaks for itself, and AT&T denies any characterization or description that is inconsistent
26 therewith. AT&T denies the remaining allegations in Paragraph 58 of the Second Amended Complaint.

27 59. AT&T denies the allegations in Paragraph 59 of the Second Amended Complaint.

1 **D. Response to Allegations Styled “The Prevalence Of SIM Card Swap Fraud”**

2 60. AT&T admits that effecting a SIM change without authorization can be referred to as
 3 “SIM swapping.” Except as expressly admitted, AT&T denies the allegations in Paragraph 60 of the
 4 Second Amended Complaint.

5 61. AT&T admits that effecting a SIM change without authorization can be referred to as
 6 “SIM swapping.” AT&T lacks sufficient information to form a belief as to the truth of the remaining
 7 allegations in Paragraph 61, which refer to SIM changes and criminal hacking conduct in general and
 8 without reference to a specific incident, and on that basis denies the same. Except as expressly
 9 admitted, AT&T denies the allegations in Paragraph 61 of the Second Amended Complaint.

10 62. AT&T admits that two-factor authentication can be used to require a person to verify
 11 their identification through two means. AT&T lacks sufficient information to form a belief as to the
 12 truth of the remaining allegations in Paragraph 62, which refer to SIM changes and criminal hacking
 13 conduct in general and without reference to a specific incident, and on that basis denies the same.
 14 Except as expressly admitted, AT&T denies the allegations in Paragraph 62 of the Second Amended
 15 Complaint.

16 63. AT&T lacks sufficient information to form a belief as to the truth of the allegations in
 17 Paragraph 63, which refer to SIM changes and criminal hacking conduct in general and without
 18 reference to a specific incident, and on that basis denies the same.

19 64. AT&T lacks sufficient information to form a belief as to the truth of the allegations in
 20 Paragraph 64, which refer to SIM changes and criminal hacking conduct in general and without
 21 reference to a specific incident, and on that basis denies the same.

22 65. AT&T admits that Exhibit E purports to be an indictment in *United States v. Freeman*
 23 *et al.*, Case No. 2:19-cr-20246 (E.D. Mich.). That document speaks for itself, and AT&T denies any
 24 characterization or description that is inconsistent therewith. Except as expressly admitted, AT&T
 25 denies the allegations in Paragraph 65 of the Second Amended Complaint.

26 66. AT&T notes that Paragraph 66 purports to quote from and characterize Exhibit E to the
 27 Second Amended Complaint. That document speaks for itself, and AT&T denies any characterization

1 or description that is inconsistent therewith. Except as expressly admitted, AT&T denies the
2 allegations in Paragraph 66 of the Second Amended Complaint.

3 67. AT&T admits that Exhibit F purports to be a criminal complaint in *United States v.*
4 *White et al.*, Case No. 2:19-mj-30227 (E.D. Mich.). That document speaks for itself, and AT&T denies
5 any characterization or description that is inconsistent therewith. Except as expressly admitted, AT&T
6 denies the allegations in Paragraph 67 of the Second Amended Complaint.

7 68. AT&T notes that Paragraph 68 purports to characterize a *Motherboard* article and
8 “highly publicized felony complaints.” Those documents speak for themselves, and AT&T denies any
9 characterization or description that is inconsistent therewith. AT&T denies any remaining allegations
10 in Paragraph 68 of the Second Amended Complaint.

11 69. AT&T notes that Paragraph 69 purports to characterize several “Krebsonsecurity.com”
12 articles. Those documents speak for themselves, and AT&T denies any characterization or description
13 that is inconsistent therewith. AT&T denies any remaining allegations in Paragraph 69 of the Second
14 Amended Complaint.

15 70. AT&T notes that Paragraph 70 purports to characterize and quote from a *Motherboard*
16 article. That article speaks for itself, and AT&T denies any characterization or description that is
17 inconsistent therewith. AT&T denies any remaining allegations in Paragraph 70 of the Second
18 Amended Complaint.

19 71. AT&T notes that Paragraph 71 purports to characterize and quote from a
20 “Krebsonsecurity.com” article. That article speaks for itself, and AT&T denies any characterization
21 or description that is inconsistent therewith. AT&T denies any remaining allegations in Paragraph 71
22 of the Second Amended Complaint.

23 72. AT&T lacks knowledge or information sufficient to determine the truth of the
24 allegations in Paragraph 72 of the Second Amended Complaint, and, on that basis, denies the same.

25 73. The allegations in the second sentence of Paragraph 73 are too vague for AT&T to form
26 a belief as to the truth of the allegations, and, on that basis, AT&T denies them. AT&T notes that
27 Paragraph 73 purports to characterize a “Krebsonsecurity.com” article. That article speaks for itself,
28

1 and AT&T denies any characterization or description that is inconsistent therewith. AT&T denies any
2 remaining allegations in Paragraph 73.

3 74. Paragraph 74 purports to characterize a “Krebsonsecurity.com” article. That article
4 speaks for itself, and AT&T denies any characterization or description that is inconsistent therewith.
5 AT&T denies any remaining allegations in Paragraph 74.

6 75. Paragraph 75 purports to characterize the content of two locations on att.com. Those
7 websites speak for themselves, and AT&T denies any characterization or description that is inconsistent
8 therewith. AT&T denies the remaining allegations of Paragraph 75 of the Second Amended Complaint.

9 76. Paragraph 76 purports to characterize a “bitcoinist.com” article. That article speaks for
10 itself, and AT&T denies any characterization or description that is inconsistent therewith. AT&T
11 denies the remaining allegations in Paragraph 76 of the Second Amended Complaint.

12 77. Paragraph 77 purports to characterize articles from “Krebsonsecurity.com” and
13 *Motherboard*. Those articles speak for themselves, and AT&T denies any characterization or
14 description that is inconsistent therewith. AT&T denies the remaining allegations in Paragraph 77 of
15 the Second Amended Complaint.

16 78. Paragraph 78 purports to characterize and quote from a *Motherboard* article. That
17 article speaks for itself, and AT&T denies any characterization or description that is inconsistent
18 therewith. AT&T denies the remaining allegations in Paragraph 78 of the Second Amended Complaint.

19 79. AT&T denies the allegations in Paragraph 79 of the Second Amended Complaint.

20 80. AT&T lacks information or knowledge sufficient to form a belief as to the truth of the
21 allegations in Paragraph 80 of the Second Amended Complaint, and, on that basis, it denies them.

22 81. Paragraph 81 purports to characterize articles from “Krebsonsecurity.com.” That article
23 speaks for itself, and AT&T denies any characterization or description that is inconsistent therewith.
24 AT&T denies any remaining allegations in Paragraph 81 of the Second Amended Complaint.

25 82. Paragraph 82 purports to quote from an article from “Krebsonsecurity.com.” That article
26 speaks for itself, and AT&T denies any characterization or description that is inconsistent therewith.
27 AT&T denies any remaining allegations in Paragraph 82 of the Second Amended Complaint.

1 83. The allegations in the first two sentences of Paragraph 83 are too vague for AT&T to
 2 form a belief as to the truth of the allegations and, on that basis, AT&T denies them. AT&T notes that
 3 Paragraph 83 purports to characterize and quote from a *Motherboard* article. That article speaks for
 4 itself, and AT&T denies any characterization or description that is inconsistent therewith. AT&T
 5 denies any remaining allegations in Paragraph 83 of the Second Amended Complaint.

6 84. The allegations in the Paragraph 84 are too vague for AT&T to form a belief as to the
 7 truth of the allegations and, on that basis, AT&T denies them.

8 85. AT&T denies the allegations in Paragraph 85 of the Second Amended Complaint.

9 **E. Response to Allegations Styled “The June 11, 2017 Hack”**

10 86. AT&T admits that a SIM swap occurred with respect to Mr. Terpin’s telephone number
 11 on or about June 11, 2017. AT&T lacks knowledge or information sufficient to form a belief as to the
 12 truth of the remaining allegations in Paragraph 86 of the Second Amended Complaint, and on that basis
 13 denies the same.

14 87. AT&T lacks knowledge or information sufficient to form a belief as to the truth of the
 15 allegations in Paragraph 87 of the Second Amended Complaint, and on that basis denies the same.

16 88. AT&T admits that Mr. Terpin visited an AT&T retail store in San Juan, Puerto Rico, on
 17 or about June 13, 2017, where he met with a retail sales consultant. AT&T lacks knowledge or
 18 information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 88 of
 19 the Second Amended Complaint, and on that basis denies the same.

20 89. AT&T admits that Mr. Terpin visited an AT&T retail store in San Juan, Puerto Rico,
 21 on or about June 13, 2017, where he met with a retail sales consultant. AT&T lacks knowledge or
 22 information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 88 of
 23 the Second Amended Complaint, and on that basis denies the same.

24 90. The allegations in the first sentence of Paragraph 90 of the Second Amended Complaint
 25 are too vague for AT&T to form a belief as to the truth of the allegations and, on that basis, AT&T
 26 denies them. AT&T notes that Paragraph 90 purports to quote from Mr. Huntley’s biography on the
 27 AT&T website. That biography speaks for itself, and AT&T denies any characterization or description

1 that is inconsistent therewith. AT&T denies any remaining allegations in Paragraph 90 of the Second
2 Amended Complaint.

3 91. The allegations in the first, third, fourth, and fifth sentences of Paragraph 91 of the
4 Second Amended Complaint are too vague for AT&T to form a belief as to the truth of the allegations
5 and, on that basis, AT&T denies them. AT&T denies the allegations in the second sentence of
6 Paragraph 91. AT&T notes that the sixth sentence of Paragraph 91 purports to characterize and quote
7 from an article on AT&T's website. That website speaks for itself, and AT&T denies any
8 characterization or description that is inconsistent therewith. AT&T denies any remaining allegations
9 in Paragraph 91 of the Second Amended Complaint.

10 92. AT&T lacks knowledge or information sufficient to form a belief as to the truth of the
11 allegations in the first and fourth sentences of Paragraph 92 of the Second Amended Complaint, and
12 on that basis denies the same. AT&T denies the remaining allegation in Paragraph 92.

13 93. AT&T denies the allegations of Paragraph 93 of the Second Amended Complaint.

14 **F. Response to Allegations Styled "The January 7, 2018 Sim Swap Fraud"**

15 94. AT&T admits that, on or about January 7, 2018, Mr. Terpin's number was changed to
16 a new SIM card. AT&T denies the remaining allegations in Paragraph 94 of the Second Amended
17 Complaint.

18 95. AT&T admits that, on or about January 7, 2018, Mr. Terpin's number was changed to
19 a new SIM card. AT&T lacks knowledge or information sufficient to determine the truth of the
20 allegations in the second, fourth, and fifth sentences of Paragraph 95 of the Second Amended
21 Complaint, and on that basis denies the same. AT&T denies the remaining allegations in Paragraph 95
22 of the Second Amended Complaint.

23 96. AT&T lacks knowledge or information sufficient to determine the truth of the
24 allegations in Paragraph 96 of the Second Amended Complaint, and on that basis denies the same.

25 97. AT&T lacks knowledge or information sufficient to determine the truth of the
26 allegations in Paragraph 97 of the Second Amended Complaint, and on that basis denies the same.

27 98. AT&T denies the allegations in Paragraph 98 of the Second Amended Complaint.

28 99. AT&T denies the allegations in Paragraph 99 of the Second Amended Complaint.

1 100. AT&T denies the allegations in Paragraph 100 of the Second Amended Complaint.

2 101. AT&T denies the allegations in Paragraph 101 of the Second Amended Complaint.

3 102. AT&T lacks knowledge or information sufficient to form a belief as to the truth of the
4 allegations in Paragraph 102 of the Second Amended Complaint, and, on that basis, it denies them.

5 103. AT&T denies that any AT&T employee engaged in the alleged conduct and denies any
6 remaining allegations in Paragraph 103 of the Second Amended Complaint.

7 **G. Response to Allegations Styled “Mr. Terpin’s Special Relationship With AT&T”**

8 104. The allegations in the first three sentences of Paragraph 104 contain legal conclusions
9 that require no answer. To the extent that an answer is required, AT&T denies the allegations in the
10 first three sentence of Paragraph 104. AT&T admits that it provides wireless telecommunication
11 products and services. The remaining allegations of the last sentence of Paragraph 104 are too vague
12 for AT&T to form a belief as to the truth of those allegations and, on that basis, AT&T denies them.
13 Except as expressly admitted, AT&T denies the allegations in Paragraph 104 of the Second Amended
14 Complaint.

15 105. The allegations in Paragraph 105 contain legal conclusions that require no answer. To
16 the extent that an answer is required, AT&T denies the allegations in Paragraph 105 of the Second
17 Amended Complaint.

18 106. The allegations in Paragraph 106 contain legal conclusions that require no answer. To
19 the extent that an answer is required, AT&T denies allegations in Paragraph 106 of the Second
20 Amended Complaint.

21 107. AT&T lacks knowledge or information sufficient for form a belief as to the truth of the
22 allegations in Paragraph 107 of the Second Amended Complaint, and on that basis denies them.

23 108. The allegations in Paragraph 108 contain legal conclusions that require no answer. To
24 the extent that an answer is required, AT&T denies the allegations in Paragraph 108 of the Second
25 Amended Complaint.

26 109. The allegations in Paragraph 109 contain legal conclusions that require no answer. To
27 the extent that an answer is required, AT&T denies the allegations in Paragraph 109 of the Second
28 Amended Complaint.

110. The allegations in Paragraph 110 contain legal conclusions that require no answer. To the extent that an answer is required, AT&T denies the allegations in Paragraph 110 of the Second Amended Complaint.

V. Response to Allegations for “Claims for Relief”

A. First Claim For Relief – Declaratory Relief: Unenforceability of AT&T Consumer Agreement as Unconscionable and Contrary to Public Policy

111. AT&T admits that Mr. Terpin purports to bring a claim for declaratory relief under 28 U.S.C. § 2201. AT&T denies that Mr. Terpin is entitled to this or any other relief. AT&T denies any remaining allegations in Paragraph 111 of the Second Amended Complaint.

112. AT&T denies the allegations in the first sentence of Paragraph 112 of the Second Amended Complaint. AT&T lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 112, and, on that basis, it denies them.

113. AT&T admits that it uses a standard Wireless Customer Agreement for many of its customers. Except as expressly admitted, AT&T denies the allegations in Paragraph 113 of the Second Amended Complaint.

114. AT&T admits that it uses a standard Wireless Customer Agreement for many of its customers. AT&T admits that Exhibit D appears to be a copy of the Wireless Customer Agreement V03022017. That Agreement speaks for itself, and AT&T denies any characterization or description that is inconsistent therewith. The allegations in the third sentence of Paragraph 114 of the Second Amended Complaint contains legal conclusions that require no answer. To the extent that an answer is required, AT&T denies the allegations in the third sentence of Paragraph 114 of the Second Amended Complaint. AT&T denies any remaining allegations in Paragraph 114 of the Second Amended Complaint.

115. Paragraph 115 of the Second Amended Complaint purports to characterize and quote from the Wireless Customer Agreement. That agreement speaks for itself, and AT&T denies any characterization or description that is inconsistent therewith. AT&T denies the remaining allegations in Paragraph 115 of the Second Amended Complaint.

1 116. Paragraph 116 of the Second Amended Complaint contains legal conclusions that
 2 require no answer. To the extent that an answer is required, AT&T denies the allegations in Paragraph
 3 116 of the Second Amended Complaint.

4 117. Paragraph 117 of the Second Amended Complaint purports to characterize the Wireless
 5 Customer Agreement. That agreement speaks for itself, and AT&T denies any characterization or
 6 description that is inconsistent therewith. The allegations in Paragraph 117 contain legal conclusions
 7 that require no answer. To the extent that an answer is required, AT&T denies the allegations in
 8 Paragraph 117 of the Second Amended Complaint.

9 118. AT&T notes that Paragraph 118 of the Second Amended Complaint purports to
 10 characterize and quote from the Agreement. That agreement speaks for itself, and AT&T denies any
 11 characterization or description that is inconsistent therewith. The allegations in Paragraph 118 contain
 12 legal conclusions that require no answer. To the extent that an answer is required, AT&T denies the
 13 remaining allegations in Paragraph 118 of the Second Amended Complaint.

14 119. The allegations in Paragraph 119 contain legal conclusions that require no answer. To
 15 the extent that an answer is required, AT&T notes that Paragraph 119 purports to quote from and
 16 characterize the Wireless Customer Agreement. That agreement speaks for itself, and AT&T denies
 17 any characterization or description that is inconsistent therewith. AT&T further denies that the
 18 Agreement is unenforceable, against public policy, or otherwise unlawful. AT&T further denies that
 19 it violated any statutory duties or promises or engaged in any other conduct relative to Mr. Terpin that
 20 was unlawful or caused him harm.

21 120. AT&T notes that Paragraph 120 of the Second Amended Complaint purports to
 22 characterize and quote from the Agreement. That agreement speaks for itself, and AT&T denies any
 23 characterization or description that is inconsistent therewith.

24 121. AT&T notes that Paragraph 121 of the Second Amended Complaint purports to
 25 characterize and quote from the Agreement. That agreement speaks for itself, and AT&T denies any
 26 characterization or description that is inconsistent therewith. The allegations in Paragraph 121 contain
 27 legal conclusions that require no answer. To the extent that an answer is required, AT&T denies that
 28

1 the Damages Restriction is void under Cal. Civ. Code § 1668 or § 1670.5 or under any other law or
2 policy.

3 122. AT&T notes that Paragraph 122 of the Second Amended Complaint purports to
4 characterize and quote from the Agreement. That agreement speaks for itself, and AT&T denies any
5 characterization or description that is inconsistent therewith. The allegations in Paragraph 122 contain
6 legal conclusions that require no answer. To the extent that an answer is required, AT&T denies that
7 the Exculpatory Provision is invalid under Civil Code § 1670.5 or under any other law or policy.

8 123. The allegations in Paragraph 123 contain legal conclusions that require no answer. To
9 the extent that an answer is required, AT&T denies the allegations in Paragraph 123 of the Second
10 Amended Complaint.

11 124. The allegations in Paragraph 124 contain legal conclusions that require no answer. To
12 the extent that an answer is required, AT&T denies the allegations in Paragraph 124 of the Second
13 Amended Complaint.

14 125. AT&T notes that Paragraph 125 of the Second Amended Complaint purports to
15 characterize and quote from the Agreement. That agreement speaks for itself, and AT&T denies any
16 characterization or description that is inconsistent therewith. The first sentence of Paragraph 125
17 contain legal conclusions that require no answer. To the extent that an answer is required, AT&T
18 denies that the Agreement is unenforceable for the reason stated or any other reason.

19 126. AT&T notes that Paragraph 126 of the Second Amended Complaint purports to
20 characterize and quote from the Agreement. That agreement speaks for itself, and AT&T denies any
21 characterization or description that is inconsistent therewith. Paragraph 125 contains legal conclusions
22 that require no answer. To the extent that an answer is required, AT&T denies that the Indemnity or
23 the Agreement is a contract of adhesion or that it is unconscionable or unenforceable for the reason
24 stated or any other reason.

25 127. The allegations in Paragraph 127 contain legal conclusions that require no answer. To
26 the extent that an answer is required, AT&T denies the allegations in Paragraph 127 of the Second
27 Amended Complaint.

28

1 128. AT&T notes that Paragraph 128 of the Second Amended Complaint purports to
 2 characterize from the Agreement. That agreement speaks for itself, and AT&T denies any
 3 characterization or description that is inconsistent therewith. The allegations in Paragraph 128 contain
 4 legal conclusions that require no answer. To the extent that an answer is required, AT&T denies that
 5 the Arbitration Provision or the Agreement is unenforceable for the reason stated or any other reason.

6 129. The allegations in Paragraph 129 contain legal conclusions that require no answer. To
 7 the extent that an answer is required, AT&T denies that any defense raised by Mr. Terpin provides a
 8 basis to find the Agreement unenforceable, void, or unlawful and denies that the defenses described in
 9 Paragraph 129 apply to the Agreement.

10 130. The allegations in Paragraph 130 contain legal conclusions that require no answer. To
 11 the extent that an answer is required, AT&T denies that there is an actionable and justiciable
 12 controversy between Mr. Terpin and AT&T with respect to the enforceability of the Agreement and
 13 denies that the Agreement is unconscionable or void against public policy for the reason stated in
 14 Paragraph 130 or any other reason.

15 131. The allegations in Paragraph 131 contain legal conclusions that require no answer. To
 16 the extent that an answer is required, AT&T denies the allegations in Paragraph 131 of the Second
 17 Amended Complaint.

18 132. AT&T admits that Plaintiff purports to seek the relief described in Paragraph 132 of the
 19 Second Amended Complaint. AT&T denies that Plaintiff is entitled to any relief and denies any
 20 remaining allegations in Paragraph 132 of the Second Amended Complaint.

21 **B. Second Claim for Relief – Unauthorized Disclosure of Customer Confidential
 22 Proprietary Information and Proprietary Network Information, Federal
 23 Communications Act, 47 U.S.C. §§ 206, 222**

24 133. AT&T repeats and incorporates by reference each and every denial, admission, and
 25 averment set forth in Paragraphs 1 through 132 above as though fully set forth herein.

26 134. The allegations in Paragraph 134 contain legal conclusions that require no answer. To
 27 the extent that an answer is required, AT&T admits that it is subject to regulation under the Federal
 28 Communications Act (“FCA”). The FCA speaks for itself, and AT&T denies any characterization or

1 description that is inconsistent therewith. AT&T denies the remaining allegations in Paragraph 134 of
2 the Second Amended Complaint.

3 135. Paragraph 135 of the Second Amended Complaint purports to quote from the FCA.
4 That law speaks for itself, and AT&T denies any characterization or description that is inconsistent
5 therewith. AT&T denies the remaining allegations in Paragraph 135 of the Second Amended
6 Complaint.

7 136. Paragraph 136 of the Second Amended Complaint purports to quote from the FCA.
8 That law speaks for itself, and AT&T denies any characterization or description that is inconsistent
9 therewith. AT&T denies any remaining allegations in Paragraph 136 of the Second Amended
10 Complaint.

11 137. Paragraph 137 of the Second Amended Complaint purports to quote from the FCA.
12 That law speaks for itself, and AT&T denies any characterization or description that is inconsistent
13 therewith. AT&T denies any remaining allegations in Paragraph 137 of the Second Amended
14 Complaint.

15 138. AT&T denies the allegations in Paragraph 138 of the Second Amended Complaint.

16 139. AT&T lacks knowledge or information sufficient to form a belief as to the truth of the
17 allegations in the last sentence of Paragraph 139, and, on that basis, it denies them. AT&T denies the
18 remaining allegations in Paragraph 139 of the Second Amended Complaint.

19 140. The second sentence of Paragraph 140 of the Second Amended Complaint contains legal
20 conclusions that require no answer. To the extent an answer is required, AT&T repeats and
21 reincorporates by reference each and every denial, admission, and averment set forth in the cited
22 paragraphs of the Second Amended Complaint as though fully set forth herein, and denies the
23 allegations in the second sentence of paragraph 140 of the Second Amended Complaint. AT&T denies
24 the remaining allegations in Paragraph 140 of the Second Amended Complaint.

25 141. The allegations in Paragraph 141 contain legal conclusions that require no answer. To
26 the extent that an answer is required, AT&T denies that Plaintiff is entitled to any relief and denies any
27 remaining allegations in Paragraph 141 of the Second Amended Complaint.

28

1 **C. Third Claim for Relief – Deceit by Concealment, Cal. Civ. Code §§ 1709, 1710**

2 142. Because the Court dismissed Claim 3, no response is required to Paragraph 142 of the
 3 Second Amended Complaint. To the extent a response is required, AT&T repeats and incorporates by
 4 reference each and every denial, admission, and averment set forth in Paragraphs 1 through 141 above
 5 as though fully set forth herein.

6 143. Because the Court dismissed Claim 3, no response is required to Paragraph 143 of the
 7 Second Amended Complaint. To the extent a response is required, AT&T denies the allegations in
 8 Paragraph 143 of the Second Amended Complaint.

9 144. Because the Court dismissed Claim 3, no response is required to Paragraph 144 of the
 10 Second Amended Complaint. To the extent a response is required, AT&T denies the allegations in
 11 Paragraph 144 of the Second Amended Complaint.

12 145. Because the Court dismissed Count 3, no response is required to Paragraph 145 of the
 13 Second Amended Complaint. To the extent a response is required, AT&T denies the allegations in
 14 Paragraph 145 of the Second Amended Complaint.

15 146. Because the Court dismissed Count 3, no response is required to Paragraph 146 of the
 16 Second Amended Complaint. To the extent a response is required, AT&T denies the allegations in
 17 Paragraph 146 of the Second Amended Complaint.

18 147. Because the Court dismissed Count 3, no response is required to Paragraph 147 of the
 19 Second Amended Complaint. To the extent a response is required, AT&T notes that Paragraph 147 of
 20 the Second Amended Complaint purports to quote from and characterize AT&T’s Privacy Policy. That
 21 document speaks for itself, and AT&T denies any characterization or description that is inconsistent
 22 therewith. To the extent a response is required, AT&T denies the remaining allegations in Paragraph
 23 147 of the Second Amended Complaint.

24 148. Because the Court dismissed Count 3, no response is required to Paragraph 148 of the
 25 Second Amended Complaint. To the extent a response is required, AT&T states that the allegations of
 26 Paragraph 148 are too vague for AT&T to form a belief as to the truth of those allegations and, on that
 27 basis, AT&T denies them. AT&T further denies that any AT&T employee was involved in the alleged
 28

1 SIM swap. AT&T denies any remaining allegations in Paragraph 148 of the Second Amended
2 Complaint.

3 149. Because the Court dismissed Count 3, no response is required to Paragraph 149 of the
4 Second Amended Complaint. To the extent a response is required, AT&T denies the allegations in
5 Paragraph 149 of the Second Amended Complaint.

6 150. Because the Court dismissed Count 3, no response is required to Paragraph 150 of the
7 Second Amended Complaint. To the extent a response is required, AT&T denies the allegations in
8 Paragraph 150 of the Second Amended Complaint.

9 151. Because the Court dismissed Count 3, no response is required to Paragraph 151 of the
10 Second Amended Complaint. To the extent a response is required, AT&T denies the allegations in
11 Paragraph 151 of the Second Amended Complaint.

12 152. Because the Court dismissed Count 3, no response is required to Paragraph 152 of the
13 Second Amended Complaint. To the extent a response is required, AT&T denies the allegations in
14 Paragraph 152 of the Second Amended Complaint.

15 153. Because the Court dismissed Count 3, no response is required to Paragraph 153 of the
16 Second Amended Complaint. To the extent a response is required, AT&T denies the allegations in
17 Paragraph 153 of the Second Amended Complaint.

18 154. Because the Court dismissed Count 3, no response is required to Paragraph 154 of the
19 Second Amended Complaint. To the extent a response is required, AT&T denies the allegations in
20 Paragraph 154 of the Second Amended Complaint.

21 155. Because the Court dismissed Count 3, no response is required to Paragraph 155 of the
22 Second Amended Complaint. Moreover, the second sentence of Paragraph 155 of the Second
23 Amended Complaint contains legal conclusions that require no answer. To the extent an answer is
24 required, AT&T repeats and reincorporates by reference each and every denial, admission, and
25 averment set forth in the cited paragraphs of the Second Amended Complaint as though fully set forth
26 herein. Further, AT&T lacks knowledge or information sufficient to form a belief as to the truth of the
27 allegations in the third sentence of Paragraph 155 and, on that basis, AT&T denies them. AT&T denies
28 the remaining allegations in Paragraph 155 of the Second Amended Complaint.

1 156. Because the Court dismissed Count 3, no response is required to Paragraph 156 of the
 2 Second Amended Complaint. To the extent a response is required, AT&T admits that Plaintiff purports
 3 to seek the relief described in Paragraph 156 of the Second Amended Complaint. AT&T denies that
 4 Plaintiff is entitled to any relief whatsoever and denies any remaining allegations in Paragraph 156 of
 5 the Second Amended Complaint.

6 **D. Fourth Claim for Relief – Misrepresentation**

7 157. Because the Court dismissed Claim 4, no response is required to Paragraph 157 of the
 8 Second Amended Complaint. To the extent a response is required, AT&T repeats and incorporates by
 9 reference each and every denial, admission, and averment set forth in Paragraphs 1 through 156 above
 10 as though fully set forth herein.

11 158. Because the Court dismissed Claim 4, no response is required to Paragraph 158 of the
 12 Second Amended Complaint. Moreover, Paragraph 158 contains legal conclusions to which no
 13 response is required. To the extent a response is required, AT&T repeats and reincorporates by
 14 reference each and every denial, admission, and averment set forth in the cited paragraphs of the Second
 15 Amended Complaint as though fully set forth herein, and denies the allegations in Paragraph 158 of
 16 the Second Amended Complaint.

17 159. Because the Court dismissed Claim 4, no response is required to Paragraph 159 of the
 18 Second Amended Complaint. To the extent a response is required, AT&T denies the allegations in
 19 Paragraph 159 of the Second Amended Complaint.

20 160. Because the Court dismissed Claim 4, no response is required to Paragraph 160 of the
 21 Second Amended Complaint. To the extent a response is required, AT&T denies the allegations in
 22 Paragraph 160 of the Second Amended Complaint.

23 161. Because the Court dismissed Claim 4, no response is required to Paragraph 161 of the
 24 Second Amended Complaint. To the extent a response is required, AT&T denies the allegations in
 25 Paragraph 161 of the Second Amended Complaint.

26 162. Because the Court dismissed Claim 4, no response is required to Paragraph 162 of the
 27 Second Amended Complaint. To the extent a response is required, AT&T denies the allegations in
 28 Paragraph 162 of the Second Amended Complaint.

1 163. Because the Court dismissed Claim 4, no response is required to Paragraph 163 of the
 2 Second Amended Complaint. Moreover, the second sentence of Paragraph 163 of the Second
 3 Amended Complaint contains legal conclusions that require no answer. To the extent an answer is
 4 required, AT&T repeats and reincorporates by reference each and every denial, admission, and
 5 averment set forth in the cited paragraphs of the Second Amended Complaint as though fully set forth
 6 herein, and denies any remaining allegations in Paragraph 163 of the Second Amended Complaint.

7 164. Because the Court dismissed Count 4, no response is required to Paragraph 164 of the
 8 Second Amended Complaint. To the extent a response is required, AT&T admits that Plaintiff purports
 9 to seek the relief described in Paragraph 164 of the Second Amended Complaint. AT&T denies that
 10 Plaintiff is entitled to any relief whatsoever and denies any remaining allegations in Paragraph 164 of
 11 the Second Amended Complaint.

12 165. Because the Court dismissed Count 4, no response is required to Paragraph 165 of the
 13 Second Amended Complaint. To the extent a response is required, AT&T denies the allegations in
 14 Paragraph 165 of the Second Amended Complaint.

15 **E. Fifth Claim for Relief – Negligence**

16 166. AT&T repeats and incorporates by reference each and every denial, admission, and
 17 averment set forth in Paragraphs 1 through 165 above as though fully set forth herein.

18 167. Paragraph 167 of the Second Amended Complaint contains legal conclusions to which
 19 no response is required. To the extent a response is required, AT&T repeats and reincorporates by
 20 reference each and every denial, admission, and averment set forth in the cited paragraphs of the Second
 21 Amended Complaint as though fully set forth herein, and denies the allegations in Paragraph 167 of
 22 the Second Amended Complaint.

23 168. Paragraph 168 of the Second Amended Complaint contains legal conclusions to which
 24 no response is required. To the extent a response is required, AT&T denies the allegations in Paragraph
 25 168 of the Second Amended Complaint.

26 169. The allegations in the first sentence of Paragraph 169 are too vague for AT&T to form
 27 a belief as to the truth of those allegations and, on that basis, AT&T denies them. AT&T's Privacy
 28 Policy and website speak for themselves, and AT&T denies any characterization or description that is

1 inconsistent therewith. AT&T denies the remaining allegations in Paragraph 169 of the Second
2 Amended Complaint.

3 170. The first sentence of Paragraph 170 of the Second Amended Complaint contains legal
4 conclusions to which no response is required. To the extent a response is required, AT&T denies the
5 allegations in the first sentence of Paragraph 170 of the Second Amended Complaint. AT&T lacks
6 knowledge or information sufficient to form a belief as to the truth of the allegations in the second
7 sentence of Paragraph 170, and on that basis denies them. AT&T denies the remaining allegations of
8 Paragraph 170 of the Second Amended Complaint.

9 171. Paragraph 171 of the Second Amended Complaint contains legal conclusions to which
10 no response is required. To the extent a response is required, AT&T denies the allegations in Paragraph
11 171 of the Second Amended Complaint.

12 172. Paragraph 172 of the Second Amended Complaint contains legal conclusions to which
13 no response is required. To the extent a response is required, AT&T denies the allegations in Paragraph
14 172 of the Second Amended Complaint.

15 173. Paragraph 173 of the Second Amended Complaint contains legal conclusions to which
16 no response is required. To the extent a response is required, AT&T repeats and reincorporates by
17 reference each and every denial, admission, and averment set forth in the cited paragraphs of the Second
18 Amended Complaint as though fully set forth herein, and AT&T denies the remaining allegations in
19 Paragraph 173 of the Second Amended Complaint.

20 174. Paragraph 174 of the Second Amended Complaint contains legal conclusions to which
21 no response is required. To the extent a response is required, AT&T denies the allegations in Paragraph
22 174 of the Second Amended Complaint.

23 175. Because the Court dismissed Mr. Terpin's request for punitive damages, no response is
24 required to Paragraph 175 of the Second Amended Complaint. To the extent a response is required,
25 AT&T denies that Mr. Terpin is entitled to any relief whatsoever and denies the allegations in
26 Paragraph 175 of the Second Amended Complaint.

1 176. Because the Court dismissed Mr. Terpin's request for punitive damages, no response is
 2 required to Paragraph 176 of the Second Amended Complaint. To the extent a response is required,
 3 AT&T denies the allegations in Paragraph 176 of the Second Amended Complaint.

4 **F. Sixth Claim for Relief – Negligent Supervision and Training**

5 177. AT&T repeats and incorporates by reference each and every denial, admission, and
 6 averment set forth in Paragraphs 1 through 176 above as though fully set forth herein.

7 178. Paragraph 178 of the Second Amended Complaint contains legal conclusions to which
 8 no response is required. To the extent a response is required, AT&T repeats and reincorporates by
 9 reference each and every denial, admission, and averment set forth in the cited paragraphs of the Second
 10 Amended Complaint as though fully set forth herein, and AT&T denies the allegations in Paragraph
 11 178 of the Second Amended Complaint.

12 179. Paragraph 179 of the Second Amended Complaint contains legal conclusions to which
 13 no response is required. To the extent a response is required, AT&T denies the allegations in Paragraph
 14 179 of the Second Amended Complaint.

15 180. AT&T denies the allegations in Paragraph 180 of the Second Amended Complaint.

16 181. The allegations in the first sentence of Paragraph 181 are too vague for AT&T to form
 17 a belief as to the truth of those allegations and, on that basis, AT&T denies them. AT&T denies the
 18 remaining allegations in Paragraph 181 of the Second Amended Complaint.

19 182. AT&T notes that Paragraph 182 of the Second Amended Complaint purports to
 20 characterize AT&T's COBC and a Consent Decree entered into by the FCC and AT&T Services, Inc.,
 21 which is not a party to this case. Those documents speak for themselves, and AT&T denies any
 22 characterization or description that is inconsistent therewith. The first and third sentences of Paragraph
 23 182 of the Second Amended Complaint contain legal conclusions to which no response is required. To
 24 the extent a response is required, AT&T denies the allegations in the first and third sentences of
 25 Paragraph 182 of the Second Amended Complaint. AT&T lacks knowledge or information sufficient
 26 to form a belief as to the truth of the allegations in the second sentence of Paragraph 182, and, on that
 27 basis, it denies them. AT&T denies the remaining allegations of Paragraph 182 of the Second Amended
 28 Complaint.

1 183. The first sentence of Paragraph 183 of the Second Amended Complaint contains legal
2 conclusions to which no response is required. To the extent a response is required, AT&T denies the
3 allegations in the first sentence of Paragraph 183 of the Second Amended Complaint. AT&T denies
4 the remaining allegations in Paragraph 183 of the Second Amended Complaint.

5 184. AT&T denies the allegations in Paragraph 184 of the Second Amended Complaint.

6 185. Paragraph 185 of the Second Amended Complaint contains legal conclusions to which
7 no response is required. To the extent a response is required, AT&T denies the allegations in Paragraph
8 185 of the Second Amended Complaint.

9 186. Paragraph 186 of the Second Amended Complaint contains legal conclusions to which
10 no response is required. To the extent a response is required, AT&T denies the allegations in Paragraph
11 186 of the Second Amended Complaint.

12 187. Paragraph 187 of the Second Amended Complaint contains legal conclusions to which
13 no response is required. To the extent a response is required, AT&T repeats and reincorporates by
14 reference each and every denial, admission, and averment set forth in the cited paragraphs of the Second
15 Amended Complaint as though fully set forth herein, and AT&T denies the allegations in Paragraph
16 187 of the Second Amended Complaint.

17 188. Paragraph 188 of the Second Amended Complaint contains legal conclusions to which
18 no response is required. To the extent a response is required, AT&T denies the allegations in Paragraph
19 188 of the Second Amended Complaint.

20 189. Because the Court dismissed Mr. Terpin's request for punitive damages, no response is
21 required to Paragraph 189 of the Second Amended Complaint. To the extent a response is required,
22 AT&T denies that Mr. Terpin is entitled to any relief whatsoever and denies the allegations in
23 Paragraph 189 of the Second Amended Complaint.

24 190. Because the Court dismissed Mr. Terpin's request for punitive damages, no response is
25 required to Paragraph 190 of the Second Amended Complaint. To the extent a response is required,
26 AT&T denies the allegations in Paragraph 190 of the Second Amended Complaint.

1 **G. Seventh Claim for Relief – Negligent Hiring**

2 191. AT&T repeats and incorporates by reference each and every denial, admission, and
 3 averment set forth in Paragraphs 1 through 190 above as though fully set forth herein.

4 192. Paragraph 192 of the Second Amended Complaint contains legal conclusions to which
 5 no response is required. To the extent a response is required, AT&T repeats and reincorporates by
 6 reference each and every denial, admission, and averment set forth in the cited paragraphs of the Second
 7 Amended Complaint as though fully set forth herein, and AT&T denies the allegations in Paragraph
 8 192 of the Second Amended Complaint.

9 193. Paragraph 193 of the Second Amended Complaint contains legal conclusions to which
 10 no response is required. To the extent a response is required, AT&T denies the allegations in Paragraph
 11 193 of the Second Amended Complaint.

12 194. The allegations in the first sentence of Paragraph 194 are too vague for AT&T to form
 13 a belief as to the truth of those allegations and, on that basis, AT&T denies them. AT&T denies the
 14 remaining allegations in Paragraph 194 of the Second Amended Complaint.

15 195. AT&T notes that Paragraph 195 of the Second Amended Complaint purports to
 16 characterize AT&T's COBC and a Consent Decree entered into by FCC and AT&T Services, Inc.,
 17 which is not a party to this case. Those documents speak for themselves, and AT&T denies any
 18 characterization or description that is inconsistent therewith. The first and fourth sentences of
 19 Paragraph 195 of the Second Amended Complaint contain legal conclusions to which no response is
 20 required. To the extent a response is required, AT&T denies the allegations in the first and fourth
 21 sentences of Paragraph 195 of the Second Amended Complaint. AT&T lacks knowledge or
 22 information sufficient to form a belief as to the truth of the allegations in the second sentence of
 23 Paragraph 195, and, on that basis, it denies them. AT&T denies the remaining allegations of Paragraph
 24 195 of the Second Amended Complaint.

25 196. The first and second sentences of Paragraph 196 of the Second Amended Complaint
 26 contains legal conclusions to which no response is required. To the extent a response is required,
 27 AT&T denies the allegations in the first and second sentences of Paragraph 196 of the Second Amended
 28 Complaint. AT&T lacks knowledge or information sufficient to form a belief regarding the truth of

1 the allegations in the last sentence of the Second Amended Complaint and, on that basis, AT&T denies
2 them. AT&T denies the remaining allegations in Paragraph 196 of the Second Amended Complaint.

3 197. AT&T denies the allegations in Paragraph 197 of the Second Amended Complaint.

4 198. Paragraph 198 of the Second Amended Complaint contains legal conclusions to which
5 no response is required. To the extent a response is required, AT&T denies the allegations in Paragraph
6 198 of the Second Amended Complaint.

7 199. Paragraph 199 of the Second Amended Complaint contains legal conclusions to which
8 no response is required. To the extent a response is required, AT&T denies the allegations in Paragraph
9 199 of the Second Amended Complaint.

10 200. AT&T admits that a Spring Communications Inc.-affiliated individual named Jahmil
11 Smith accessed Mr. Terpin's account on January 7, 2018, and completed a SIM swap. AT&T denies
12 that Mr. Smith was an employee or agent of AT&T. AT&T lacks knowledge or information sufficient
13 to form a belief regarding the truth of the allegations in the second sentence of Paragraph 200 of the
14 Second Amended Complaint and, on that basis, it denies them. AT&T denies the remaining allegations
15 in Paragraph 200 of the Second Amended Complaint.

16 201. Paragraph 201 of the Second Amended Complaint contains legal conclusions to which
17 no response is required. To the extent a response is required, AT&T repeats and reincorporates by
18 reference each and every denial, admission, and averment set forth in the cited paragraphs of the Second
19 Amended Complaint as though fully set forth herein, and AT&T denies the remaining allegations in
20 Paragraph 201 of the Second Amended Complaint.

21 202. The first sentence of Paragraph 202 of the Second Amended Complaint contains legal
22 conclusions to which no response is required. To the extent a response is required, AT&T denies the
23 allegations in the first sentence of Paragraph 202 of the Second Amended Complaint. AT&T denies
24 the remaining allegations in Paragraph 202 of the Second Amended Complaint.

25 203. Because the Court dismissed Mr. Terpin's request for punitive damages, no response is
26 required to Paragraph 203 of the Second Amended Complaint. To the extent a response is required,
27 AT&T denies that Mr. Terpin is entitled to any relief whatsoever and denies the allegations in
28 Paragraph 203 of the Second Amended Complaint.

1 204. Because the Court dismissed Mr. Terpin's request for punitive damages, no response is
 2 required to Paragraph 204 of the Second Amended Complaint. To the extent a response is required,
 3 AT&T denies the allegations in Paragraph 204 of the Second Amended Complaint.

4 **H. Eighth Claim for Relief – Breach of Contract – Privacy Policy**

5 205. AT&T repeats and incorporates by reference each and every denial, admission, and
 6 averment set forth in Paragraphs 1 through 204 above as though fully set forth herein.

7 206. Paragraph 206 of the Second Amended Complaint contains legal conclusions to which
 8 no response is required. To the extent a response is required, AT&T denies the allegations in Paragraph
 9 206 of the Second Amended Complaint.

10 207. Paragraph 207 of the Second Amended Complaint contains legal conclusions to which
 11 no response is required. To the extent a response is required, AT&T notes that Paragraph 207 purports
 12 to characterize and quote from AT&T's Privacy Policy. That document speaks for itself, and AT&T
 13 denies any characterization or description that is inconsistent therewith. AT&T denies any remaining
 14 allegations in Paragraph 207 of the Second Amended Complaint.

15 208. Paragraph 208 of the Second Amended Complaint contains legal conclusions to which
 16 no response is required. To the extent a response is required, AT&T notes that Paragraph 208 purports
 17 to characterize and quote from AT&T's COBC. That document speaks for itself, and AT&T denies
 18 any characterization or description that is inconsistent therewith. AT&T denies any remaining
 19 allegations in Paragraph 208 of the Second Amended Complaint.

20 209. Paragraph 209 of the Second Amended Complaint contains legal conclusions to which
 21 no response is required. To the extent a response is required, AT&T denies the allegations in Paragraph
 22 209 of the Second Amended Complaint.

23 210. Paragraph 210 of the Second Amended Complaint contains legal conclusions to which
 24 no response is required. To the extent a response is required, AT&T denies the allegations in Paragraph
 25 210 of the Second Amended Complaint.

26 211. The cases and statutory sections cited in the Second Amended Complaint speak for
 27 themselves, and AT&T denies any description or characterization inconsistent therewith. Paragraph
 28 211 of the Second Amended Complaint contains legal conclusions to which no response is required.

1 To the extent a response is required, AT&T repeats and reincorporates by reference each and every
2 denial, admission, and averment set forth in the cited paragraphs of the Second Amended Complaint
3 as though fully set forth herein, and AT&T denies the remaining allegations in Paragraph 211 of the
4 Second Amended Complaint.¹

5 **VI. Response to Allegations Styled “Prayer for Relief”**

6 212. AT&T denies that Plaintiff is entitled to any relief, legal or equitable, from AT&T or
7 this Court, as requested in the Second Amended Complaint or otherwise. AT&T further notes that the
8 Court has dismissed Plaintiff’s request for punitive damages.

9 **VII. Response to Allegations Styled “Demand for Jury Trial”**

10 Answering the unnumbered Demand for Jury Trial, AT&T admits that Plaintiff purports to
11 demand a jury trial in this action of all issues so triable.

12 **VIII. SEPARATE AND ADDITIONAL DEFENSES**

13 By alleging the Separate and Additional Defenses set forth below, AT&T does not assume any
14 burden of proof that would otherwise rest with Plaintiff. Nor does AT&T intend any alteration of the
15 burden of proof and/or burden of going forward with evidence that exists with respect to any of
16 Plaintiff’s claims. Further, all such defenses are pleaded in the alternative and do not constitute an
17 admission of liability or an admission that Plaintiff is entitled to any relief whatsoever. Finally, all
18 defenses pleaded below are based on AT&T’s limited understanding of the claims being asserted by
19 Plaintiff and AT&T’s limited investigation to date. AT&T reserves the right to assert additional
20 affirmative defenses after they are ascertained.

21
22
23
24
25
26 ¹ An unnumbered paragraph appears at the top of p. 70 of the Second Amended Complaint,
27 immediately after Paragraph 211. It is not clear whether this unnumbered paragraph is a part of
Paragraph 211. To the extent this unnumbered paragraph is separate from Paragraph 211, AT&T
denies the allegations in this unnumbered paragraph.

1 **FIRST SEPARATE AND ADDITIONAL DEFENSE**

2 **(Failure to State a Claim)**

3 The Second Amended Complaint, and each purported cause of action asserted against AT&T,
4 is barred to the extent it fails to allege facts sufficient to state a claim against AT&T.

5 **SECOND SEPARATE AND ADDITIONAL DEFENSE**

6 **(Statute of Limitations)**

7 The Second Amended Complaint, and each purported cause of action asserted against AT&T,
8 is barred to the extent Plaintiff is seeking relief occurring outside any applicable statutes of limitation.

9 **THIRD SEPARATE AND ADDITIONAL DEFENSE**

10 **(No Breach)**

11 The Second Amended Complaint, and each purported cause of action asserted against AT&T,
12 is barred in whole or in part because AT&T did not breach any agreement.

13 **FOURTH SEPARATE AND ADDITIONAL DEFENSE**

14 **(Reasonable Care)**

15 The Second Amended Complaint, and each purported cause of action asserted against AT&T,
16 is barred because AT&T exercised reasonable care to prevent and correct any alleged unlawful conduct.

17 **FIFTH SEPARATE AND ADDITIONAL DEFENSE**

18 **(Contract Limitations)**

19 The Second Amended Complaint, and each purported cause of action contained therein, is
20 barred in whole or in part to the extent that damages or Plaintiff's requested remedies are precluded or,
21 alternatively, limited by the terms of the contract between AT&T and Plaintiff.

22 **SIXTH SEPARATE AND ADDITIONAL DEFENSE**

23 **(Proximate Causation)**

24 The Second Amended Complaint, and each purported cause of action asserted against AT&T,
25 is barred because the harm alleged by Plaintiff, if any, was not proximately caused by any unlawful
26 policy, custom, practice, act, omission, and/or procedure promulgated and/or tolerated by AT&T.

1 **SEVENTH SEPARATE AND ADDITIONAL DEFENSE**
2 **(No Cause in Fact)**

3 The Second Amended Complaint, and each purported cause of action asserted against AT&T,
4 is barred because the harms alleged by Plaintiff, if any, were not caused in fact by AT&T.

5 **EIGHTH SEPARATE AND ADDITIONAL DEFENSE**
6 **(Lack of Proximate Causation)**

7 The Second Amended Complaint, and each purported cause of action asserted against AT&T,
8 is barred because Plaintiff has not plausibly alleged, and cannot prove, that AT&T proximately caused
9 any of Plaintiff's alleged injuries. The harm Plaintiff allegedly suffered, if any, was caused by
10 superseding and intervening causes including factors, persons, or entities other than AT&T.

11 **NINTH SEPARATE AND ADDITIONAL DEFENSE**
12 **(Laches)**

13 The Second Amended Complaint, and each purported cause of action asserted against AT&T,
14 is barred by the doctrine of laches.

15 **TENTH SEPARATE AND ADDITIONAL DEFENSE**
16 **(Unclean Hands)**

17 The Second Amended Complaint, and each purported cause of action asserted against AT&T,
18 is barred by the doctrine of unclean hands.

19 **ELEVENTH SEPARATE AND ADDITIONAL DEFENSE**
20 **(Estoppel)**

21 The Second Amended Complaint, and each purported cause of action asserted against AT&T,
22 is barred to the extent Plaintiff is estopped by his own conduct from recovering any relief.

23 **TWELFTH SEPARATE AND ADDITIONAL DEFENSE**
24 **(Waiver)**

25 The Second Amended Complaint, and each purported cause of action asserted against AT&T,
26 is barred to the extent Plaintiff waived or released any right to recover any relief.

1 **THIRTEENTH SEPARATE AND ADDITIONAL DEFENSE**

2 **(Lack of Damages)**

3 The Second Amended Complaint, and each purported cause of action asserted against AT&T,
4 is barred in whole or in part to the extent Plaintiff suffered no damages.

5 **FOURTEENTH SEPARATE AND ADDITIONAL DEFENSE**

6 **(Failure to Mitigate Damages)**

7 The Second Amended Complaint, and each purported cause of action asserted against AT&T,
8 is barred in whole or in part to the extent Plaintiff failed to mitigate his own damages or reasonably try
9 to mitigate his own damages, if any.

10 **FIFTEENTH SEPARATE AND ADDITIONAL DEFENSE**

11 **(Standing)**

12 The Second Amended Complaint, and each purported cause of action asserted against AT&T,
13 is barred to the extent that Plaintiff lacks standing to bring some or all of the alleged causes of action
14 against AT&T set forth in the Second Amended Complaint.

15 **SIXTEENTH SEPARATE AND ADDITIONAL DEFENSE**

16 **(Assumption of Risk)**

17 The Second Amended Complaint, and each purported cause of action asserted against AT&T,
18 is barred to the extent Plaintiff had actual knowledge of the risk involved with his security and
19 investment practices and voluntarily assumed that risk.

20 **SEVENTEENTH SEPARATE AND ADDITIONAL DEFENSE**

21 **(Comparative Fault)**

22 The Second Amended Complaint, and each purported cause of action asserted against AT&T,
23 is barred in whole or in part by Plaintiff's own negligence, carelessness, recklessness, or willful
24 misconduct, or the intervening negligence, recklessness, or willful misconduct of third parties, for
25 which AT&T is not liable. By reason thereof, Plaintiff's damages, if any, as against AT&T, must be
26 reduced by the proportion of fault attributable to such other parties.

1 **EIGHTEENTH SEPARATE AND ADDITIONAL DEFENSE**
2 **(Economic Loss Doctrine)**

3 The Second Amended Complaint, and each purported cause of action asserted against AT&T,
4 is barred in whole or in part to the extent that it is precluded or limited by the economic loss doctrine.

5 **NINETEENTH SEPARATE AND ADDITIONAL DEFENSE**
6 **(Offset)**

7 The damages sought by the Second Amended Complaint are barred, in whole or in part, to the
8 extent that Plaintiff has received any credits, payments, or benefits arising out of or related to the claims
9 asserted in the Second Amended Complaint. Alternatively, Plaintiff's recovery, if any, should be offset
10 by any credits, payments, or benefits, of any type or character, received by Plaintiff.

11 **TWENTIETH SEPARATE AND ADDITIONAL DEFENSE**
12 **(Failure to Exhaust Internal and/or Administrative Remedies)**

13 The Second Amended Complaint, and each purported cause of action asserted against AT&T,
14 is barred to the extent Plaintiff failed to properly exhaust all of his internal, contractual, administrative,
15 and/or statutorily required remedies, and such failure bars this suit in whole or in part and/or limits
16 Plaintiff's claims and/or Plaintiff's recovery.

17 **TWENTY-FIRST SEPARATE AND ADDITIONAL DEFENSE**
18 **(Conduct Not Willful)**

19 The Second Amended Complaint, and each purported cause of action asserted against AT&T,
20 is barred because, at all material times, AT&T and its agents acted without malice and acted reasonably
21 and with a good faith belief in the lawfulness of their conduct based on all relevant facts and
22 circumstances known by them at the time they so acted. The Second Amended Complaint, and each
23 purported cause of action asserted against AT&T, is further barred because Plaintiff cannot establish
24 "willful or knowing" conduct, as required under some or all of Plaintiff's causes of action.

1 **TWENTY-SECOND SEPARATE AND ADDITIONAL DEFENSE**
2 **(Accord and Satisfaction)**

3 The Second Amended Complaint, and each purported cause of action asserted against AT&T,
4 is barred by the doctrine of accord and satisfaction.

5 **TWENTY-THIRD SEPARATE AND ADDITIONAL DEFENSE**
6 **(Compliance with Law)**

7 The Second Amended Complaint, and each purported cause of action asserted against AT&T,
8 is barred in whole or in part, on the grounds that AT&T complied or substantially complied with all
9 applicable laws underlying the Second Amended Complaint, or took reasonable efforts to comply with
10 all applicable laws.

11 **TWENTY-FOURTH SEPARATE AND ADDITIONAL DEFENSE**
12 **(Unjust Enrichment)**

13 The Second Amended Complaint, and each purported cause of action asserted against AT&T,
14 is barred to the extent it constitutes unjust enrichment or duplicative relief of amounts seeking more
15 than a single recovery.

16 **TWENTY-FIFTH SEPARATE AND ADDITIONAL DEFENSE**
17 **(Not Entitled to Equitable Relief)**

18 The Second Amended Complaint, and each purported cause of action asserted against AT&T,
19 is barred because Plaintiff has adequate remedies at law and will not suffer imminent and irreparable
20 injury or harm as a result of any action or conduct by AT&T.

21 **TWENTY-SIXTH SEPARATE AND ADDITIONAL DEFENSE**
22 **(Damages Speculative)**

23 Plaintiff is barred from relief because the Second Amended Complaint, and each purported
24 cause of action asserted therein, is barred in whole or in part because, even if Plaintiff's allegations
25 were true, which AT&T denies, the damages alleged by Plaintiff in the Second Amended Complaint
26 are too speculative to give rise to any of the causes of action alleged, or to permit any recovery sought,
27 by Plaintiff in the Second Amended Complaint.

1 **TWENTY-SEVENTH SEPARATE AND ADDITIONAL DEFENSE**
2 **(No CPNI)**

3 The Second Amended Complaint, and each purported cause of action asserted against AT&T,
4 is barred in whole or in part to the extent Plaintiff failed to identify that AT&T disclosed, or failed to
5 safeguard, customer proprietary network information (CPNI) or any other statutorily defined
6 confidential information.

7 **TWENTY-EIGHTH SEPARATE AND ADDITIONAL DEFENSE**
8 **(No Misrepresentation or Reliance)**

9 The Second Amended Complaint, and each purported cause of action asserted against AT&T,
10 is barred in whole or in part to the extent Plaintiff has not plausibly alleged any false or negligent
11 misrepresentations by AT&T, or justifiable reliance by Plaintiff.

12 **TWENTY-NINTH SEPARATE AND ADDITIONAL DEFENSE**
13 **(Ratification)**

14 The Second Amended Complaint, and each purported cause of action asserted against AT&T,
15 is barred to the extent Plaintiff ratified AT&T's actions.

16 **THIRTIETH SEPARATE AND ADDITIONAL DEFENSE**
17 **(Avoidable Consequences)**

18 The Second Amended Complaint, and each purported cause of action asserted against AT&T,
19 is barred pursuant to the avoidable consequences doctrine. If the avoidable consequences doctrine does
20 not completely bar the Second Amended Complaint, and each purported cause of action asserted
21 against AT&T, then any recovery by Plaintiff for allegedly stolen funds must be offset or reduced to
22 the extent to which the avoidable consequences doctrine applies to some or all of Plaintiff's claims in
23 the Second Amended Complaint.

24 **THIRTY-FIRST SEPARATE AND ADDITIONAL DEFENSE**
25 **(Consent)**

26 The Second Amended Complaint, and each purported cause of action asserted against AT&T,
27 is barred to the extent Plaintiff consented to or voluntarily participated in any alleged activity or
28 conduct.

1 **THIRTY-SECOND SEPARATE AND ADDITIONAL DEFENSE**

2 **(Acting Outside the Scope of Employment)**

3 The Second Amended Complaint, and each purported cause of action asserted against AT&T,
4 is barred insofar as, if any manager, supervisor, agent, employee, or independent contractor of AT&T
5 authorized, required, or requested that a SIM swap occur illegally, or took any other impermissible
6 action (which AT&T denies), such manager, supervisor, agent, employee, or independent contractor
7 acted outside the scope of his or her employment with AT&T and/or AT&T lacked sufficient authority
8 to control the actions of such manager, supervisor, agent, employee, or independent contractor.

9 **THIRTY-THIRD SEPARATE AND ADDITIONAL DEFENSE**

10 **(Preemption)**

11 Plaintiff is barred from litigating his claims, in whole or in part, in this court to the extent that
12 any federal legislation preempts conflicting state law.

13 **THIRTY-FOURTH SEPARATE AND ADDITIONAL DEFENSE**

14 **(Release)**

15 The Second Amended Complaint, and each purported cause of action asserted against AT&T,
16 is barred to the extent it has been released.

17 **THIRTY-FIFTH SEPARATE AND ADDITIONAL DEFENSE**

18 **(No Unauthorized Access)**

19 The Plaintiff's claim under the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, is barred
20 because AT&T did not access any computer without authorization or exceed authorized access to any
21 computer.

22 **THIRTY-SIXTH SEPARATE AND ADDITIONAL DEFENSE**

23 **(No Attorneys' Fees)**

24 Plaintiff's request for attorneys' fees is barred because the Second Amended Complaint fails to
25 allege facts or any basis sufficient to support an award of attorneys' fees.

1 **THIRTY-SEVENTH SEPARATE AND ADDITIONAL DEFENSE**

2 **(No Punitive Damages)**

3 To the extent the Court later allows a request for punitive damages, Plaintiff is barred from
4 relief because the Second Amended Complaint, and each purported cause of action against AT&T, fails
5 to allege facts sufficient to allow recovery of punitive or exemplary damages from AT&T. Punitive
6 damages are also barred to the extent they are unconstitutional.

7 **THIRTY-EIGHTH SEPARATE AND ADDITIONAL DEFENSE**

8 **(No Punitive Damages - Due Process)**

9 To the extent the Court later allows a request for punitive damages, the imposition of punitive
10 damages in this case would violate the Due Process Clause of the Fifth and Fourteenth Amendments
11 to the United States Constitution because, as applied to this case, the standards of liability for punitive
12 damages in California are unduly vague and subjective, and permit retroactive, random, arbitrary, and
13 capricious punishment that serves no legitimate governmental interest.

14 **THIRTY-NINTH SEPARATE AND ADDITIONAL DEFENSE**

15 **(No Punitive Damages - Due Process)**

16 To the extent the Court later allows a request for punitive damages, the imposition of punitive
17 damages in this case would violate the Due Process Clause of the Fifth and Fourteenth Amendments
18 to the United States Constitution because, as applied to this case, the California standards for
19 determining the amount of the award are unduly vague and subjective, lack sufficient procedural
20 safeguards, and permit arbitrary, capricious, excessive, and disproportionate punishment that serves no
21 legitimate governmental interest.

22 **FORTIETH SEPARATE AND ADDITIONAL DEFENSE**

23 **(No Punitive and Exemplary Damages)**

24 To the extent the Court later allows a request for punitive damages, the penalties, fines, and
25 punitive and exemplary damages sought are unconstitutional and excessive under California law and
26 the United States Constitution, including without limitation under the Excessive Fines Clause of the
27 Eighth Amendment of the United States Constitution, and the Due Process Clauses of the Fifth and
28 Fourteenth Amendments of the United States Constitution.

1 **FORTY-FIRST SEPARATE AND ADDITIONAL DEFENSE**

2 **(No Punitive Damages - Due Process)**

3 To the extent the Court later allows a request for punitive damages, the imposition of punitive
4 damages in this case would violate the Due Process Clause of the Fifth and Fourteenth Amendments
5 to the United States Constitution because California post-verdict standards for scrutinizing punitive
6 damage verdicts do not provide a meaningful constraint on the discretion of juries to impose
7 punishment.

8 **FORTY-SECOND SEPARATE AND ADDITIONAL DEFENSE**

9 **(No Punitive Damages - Due Process)**

10 To the extent the Court later allows a request for punitive damages, the imposition of punitive
11 damages in this case based on the out-of-state conduct, profits, aggregate wealth or financial status of
12 AT&T would violate the Commerce Clause, the Due Process clause of the Fifth Amendment to the
13 United States Constitution, and the Equal Protection and Due Process Clauses of the Fourteenth
14 Amendment to the United States Constitution.

15 **FORTY-THIRD SEPARATE AND ADDITIONAL DEFENSE**

16 **(No Punitive Damages - Due Process)**

17 To the extent the Court later allows a request for punitive damages, the imposition of punitive
18 damages in this case in the absence of a showing of malicious intent to cause harm to Plaintiff would
19 violate the Due Process Clause of the Fifth and Fourteenth Amendments to the United States
20 Constitution.

21 **RESERVATION OF RIGHTS**

22 AT&T has insufficient knowledge or information upon which to form a basis as to whether it
23 may have additional, as yet unstated, separate defenses available. AT&T has not knowingly or
24 intentionally waived any applicable separate and additional or affirmative defenses and reserves the
25 right to raise additional separate and additional or affirmative defenses as they become known to it
26 through discovery in this matter. AT&T further reserves the right to amend its answer and/or its
27 separate and additional or affirmative defenses accordingly and/or to delete separate and additional or
28 affirmative defenses that it determines are not applicable during the course of subsequent discovery.

PRAYER FOR RELIEF

WHEREFORE, AT&T prays for judgment as follows:

1. That Plaintiff take nothing by the Second Amended Complaint;
 2. That the Second Amended Complaint be dismissed in its entirety and with prejudice;
 3. For judgment to be entered favor of AT&T and against Plaintiff on all claims contained in the Second Amended Complaint;
 4. For costs of suit herein and attorneys' fees as permitted by law; and
 5. For such other and further relief as the Court may deem proper and just.

Dated: September 22, 2020

MARCELLUS MCRAE
ASHLEY E. JOHNSON
GIBSON, DUNN & CRUTCHER LLP

By: /s/ Marcellus McRae
Marcellus McRae
Ashley E. Johnson

Attorneys for Defendant AT&T MOBILITY, LLC

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